IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1879 of 2000
With
SPECIAL CIVIL APPLICATION No 8120 of 1999
With
SPECIAL CIVIL APPLICATION No 1211 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIRABEN LALIBEN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1879 of 2000
MR CB DASTOOR for Petitioners
MS DS PANDIT, AGP. for Respondent.
2. Special Civil ApplicationNo 8120 of 1999
MR CB DASTOOR for Petitioners
MS DS PANDIT, AGP. for Respondents.
3. Special Civil Application No.1211 of 1999
MS SK VISHEN for Petitioner.
MR SN SHELAT, Advocate General with
MS DS PANDIT, APG. for Respondents.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 23/02/2001

COMMON JUDGEMENT

1. These three petitions raise a common point and the same are dealt with by this consolidated judgment. In all the three petitions the respective petitioners have challenged the decision of the State Government not to treat them as "Swatantra Senani" for the purpose of Pension Scheme 1980.

2. The undisputed facts are that all the petitioners were mill workers at the relevant point of time and they participated in "QUIT INDIA MOVEMENT" in 1942 by going on strike for a period of about three and half months. On the strength of such participation, the petitioners have staked their claim in terms of the pension scheme and initially the claim was made under the 1980 Scheme, but when they realised that the same pertained to the scheme framed by the Central Government, the claim was restricted to the scheme of the State Government.

3. The principal thrust of the submission on behalf of the petitioners has been that the State Government has already recognised the petitioners as persons who participated in the freedom struggle, by way of honouring them as per terms of circular dated 26/2/1993; that once this was established i.e. their participation in the freedom movement it was not open to the State Government to refuse them pension, to which they are entitled as a natural corollary. In support of this principal contention reliance was placed on guidelines issued by the State Government on 30/8/1992, and it was submitted that the petitioners are persons who have taken part in the independence movement and suffered as a consequence by virtue of which they fall within the first category prescribed in the said circular of 30/8/1992 and hence they are entitled to be granted pension by the State Government. Elaborating on this submission, it was stated that the petitioners were out of job for a period of three and half months and they having forgone their livelihood during the said period the stand of the State Government that the petitioners are not persons who fall within the category of Swatantra Senani should not be upheld and the respondents must be directed to treat the petitioners as Swatantra Senani and be held entitled to pension as such.

4. In two of the petitions viz. SCA Nos.8120/99 and 1879/2000 one of the prayers seeks quashing of circular dated 26/2/1993 issued by the State Government. However, realising the difficulty, during the course of the arguments, the said prayer is given up as otherwise the petitioners would not be able to support their principal contention of having been treated as persons who had taken part in the freedom struggle.

5. Mr.Dastur on behalf of the petitioners placed reliance upon decision of this Court in 1995(1) GLR 289 and pointed out that in the said decision though the Court was called upon to decide in relation to the scheme of 1980 the ratio should be applied to the case of the petitioners also. It was submitted that the phrase used in the scheme of 1980 was "loss of job" and not "loss of permanent job" and hence, as held by this Court the objective of the scheme only suggested that persons who lost their jobs would be covered on account of their suffering. It was therefore urged that the petitioners having forgone their livelihood by way of striking work for a period of three and half months, it should be held that they had suffered as such and accordingly they were entitled to pension.

6. Mr.Dastur further referred to para 4 of the affidavit in reply wherein the criteria laid down under the State Government Scheme for freedom fighters have been enumerated and stated that the criteria are ex-facie bad in as much as the same are vague and discriminatory in nature - as they create irrational distinction between persons of the same class, viz. persons who have taken part in freedom struggle and suffered. In this context it was further submitted that it was not open to the State Government to take a stand as to what extent a person ought to have suffered before such person became entitled to pension once his suffering stands established; and in case of the petitioners their status of having taken part in freedom struggle and having suffered as a consequence already stood established and admitted by the State Government by way of honouring them with a Shawl, payment of Rs.2,000/- and a certificate.

7. Further, referring to the affidavit in reply it was pointed out that though at page 44, it is stated that after returning from the strike all the mill workers were provided with Rs.500/- as lump sum amount being compensation for their sufferings; the respondents had not been able to show as to who had paid the workers and at what point of time. It was further submitted that in

the rejoinder affidavit the petitioners have specifically denied this fact and stated in no uncertain terms that the petitioners were not in receipt of such sum of Rs.500/- at any point of time, and therefore, there was no question of being compensated in 1942 as averred in the affidavit in reply.

8. On behalf of the respondents reliance was placed upon the affidavit in reply filed : wherein it was made clear that the State Government had taken a policy decision by virtue of resolution dated 26/2/1993. The entire class of mill workers was by reason of the said resolution treated as a separate class and the Government was entitled to do so and such classification could not be said to be arbitrary or discriminatory in light of the settled legal position. In support of this contention reliance was placed upon annexures to the affidavit in reply, particularly, in SCA No.1211/99, and on the basis of the same it was pointed out that there were various proposals moved before the State Government from time to time since 1987. It was further pointed out referring to the report of the Mill Owners Association dated 31/8/1979, that for the year ending 31/8/1942, 74 mills were working at that point of time the average number of workers employed daily were 76,789. It was therefore pointed out that taking the aforesaid figures as the basis; the number of such mill workers could be anywhere between 10,000 to 50,000 and in light of this it would result in a great financial burden on the State Government. In light of all the aforesaid factors, it was submitted that the decision of the State Government did not call for any interference.

9. In rejoinder, the petitioners' Advocate contended that the figure of mill workers would not exceed morethan 4,000 and as such there was no cause for taking different view in the matter in view of the fact that the mill workers had already been identified by Majoor Mahajan Sangh and the other unions on the basis of which they had been treated as persons who had participated in the freedom struggle and were honoured for the same vide resolution dated 26/2/1993. It was further submitted that one of the annexures in the affidavit in reply was some confidential internal note, which also was incomplete and no reliance should be placed on what is stated therein and the same should be ignored for the purpose of arriving at a decision.

10. At this stage our attention was drawn to decision of Apex Court reported in 1997(10)SCC 190 and alternative prayer was made stating that the entire matter may be

remanded to the State Government so as to enable the State Government to apply its mind afresh in light of the principles laid down by the Apex Court and other decisions of this Court, to adopt liberal approach and grant benefit of doubt to the petitioners. Reiterating basic submission that the petitioners had already been recognised as persons who had participated in the freedom struggle the State Government must now be directed to act on the said footing and should not discriminate against the petitioners vis-a-vis other persons who had taken part in the freedom struggle.

11. Having taken into consideration the submissions made on behalf of the petitioners and the respondents and after perusing the various documents which have come on record we find that the petitioners have not been able to make out any case in support of their claim. The resolution dated 26/2/1993 pertains to a class of persons viz. mill workers who went on strike in 1942 during 'QUIT INDIA MOVEMENT'. For having participated in the said movement by way of striking work for three and half months, the State Government has already honoured such class of workers with a Shawl, a Certificate and payment of Rs.500/-. In such circumstances, the stand of the State Government that such a class of persons cannot be equated with the other category of persons who participated in the freedom movement cannot be held to be arbitrary or discriminatory in light of the settled legal position. Merely because these persons as well as some others participated in freedom movement it cannot be stated that such a group of persons would fall within the same class and even if for the sake of argument they could be stated to so fall it would be entirely open to the Government to formulate a policy in relation to different categories of such persons if the basis adopted could be shown to be rational. In the case of the petitioners they abstained from work for three and half months and remained absent from job and thereafter resumed on the same job and hence, they cannot be stated to be persons who had lost their jobs whether temporarily or permanently. As per the resolution dated 26/2/1993 the State Government has adopted a policy to honour such mill workers and if that be so it cannot be stated that such resolution is liable to be struck down as prayed for in the petition. Even otherwise, the petitioner workers having accepted the honour/benefits bestowed upon them by the State Government by virtue of the said resolution, cannot now turn round and say that the said resolution should be struck down so as to entitle them to claim compensation by way of pension as Swatantra Senani. Moreover, the basic thrust of the contention on behalf of

the petitioners has been that the State Government has already recognised their status as persons who had taken part in freedom struggle on the basis of the State Government having honoured them, it would not be now open to the petitioners to stake their claim on different footing.

12. In view of what is stated hereinabove all these petitions are rejected. Rule is discharged with no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt